

### **REMARKS/ARGUMENTS**

Claims 1, 3, 5 through 7, 10 through 15, 20 through 24, and 26 through 30 are pending in the application. Claims 1, 6, 10, 11, 20 and 26 through 28 are amended. Support for the amendments can be found in the published application at paragraphs [0055], [0068] and [0072]. Applicants respectfully submit that no new matter has been introduced by the amendments. For at least the reasons set forth below, Applicants respectfully submit that Claims 1, 3, 5 through 7, 10 through 15, 20 through 24, and 26 through 30 are allowable over the art of record.

Claims 1, 3, 7 and 10 through 13 stand rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, 7 and 10 through 13 of U.S. Patent No. 6,635,205 to Williams et al. (Williams).

Applicants respectfully submit that a terminal disclaimer is filed herewith in compliance with 37 CFR §1.321(c) to overcome the obviousness-type double patenting rejection. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

**Claims 1, 3, 5 through 7, 10, 12 through 15, 21 through 24, and 27 through 30 stand rejected under 35 USC §102(b) as being anticipated by U.S. Patent No. 5,417,224 to Petrus et al. (Petrus).**

Claim 1 of the present application recites a fibrous tampon for absorbing body fluids. The tampon has one or more malodor counteractant materials, in liquid form, present between about 0.01 grams to about 0.15 grams. The malodor counteractant materials are selected from glycerin, glycerin compound, aldehyde, natural oil, solution of soluble natural compound, natural plant and herb extract, naturally occurring deodorizing active, citric acid, acetic acid, base, EDTA, ester, masking agent, sensory receptor alterant, oxidizing agent, biological agent, surfactant, surface active polymer, and any mixtures of these, but not including ascorbic acid or its derivatives. Claims 3, 5 and 24 depend from claim 1.

Independent claim 6 recites a fibrous tampon for absorbing body fluids. The tampon has glycerin present between about 0.01 grams to about 0.15 grams. The glycerin is naturally sourced. Claims 7 and 10 depend from claim 6.

Independent claim 11 recites a fibrous tampon for absorbing body fluids. The tampon has thereon a malodor counteractant material comprising glycerin, and at least one additional malodor counteractant material selected from aldehyde, natural oil, solution of soluble natural compound, natural plant and herb extract, citric acid, base, EDTA, ester, sensory receptor alterant, oxidizing agent, biological agent, surfactant, surface active polymer, zeolite, and any mixtures thereof. Claims 12 through 15 depend from claim 11.

Independent claim 20 recites a fibrous tampon for absorbing body fluids. The tampon has a fibrous material for absorbing the body fluids and a liquid glycerin that does not support microbial growth disposed within the fibrous material of the tampon to absorb odors associated with the body fluids. Claims 21 through 23 depend from claim 20.

Independent claim 26 recites a method of deodorizing a vaginal area comprising applying to the vaginal area a multi-layered fibrous absorbent article having a malodor counteractant material comprising glycerin and at least one additional malodor counteractant material selected from aldehyde, natural oil, solution of soluble natural compound, natural plant and herb extract, naturally occurring deodorizing active, citric acid, base, EDTA, ester, masking agent, sensory receptor alterant, oxidizing agent, biological agent, surfactant, surface active polymer, zeolite, and any mixtures thereof, wherein the glycerin and the additional malodor counteractant materials counteract malodor in the vaginal area.

Independent claim 27 recites a method of deodorizing a vaginal area comprising applying to the vaginal area a fibrous absorbent article having a fibrous material suitable for absorbing body fluids and a liquid glycerin that does not support microbial growth disposed in the fibrous material, to counteract malodor in the vaginal area. The liquid glycerin is present between about 0.01

grams to about 0.15 grams.

Independent claim 28 recites a fibrous absorbent article for absorbing body fluids. The fibrous absorbent article has one or more malodor counteractant materials, in liquid form, selected from aldehyde, natural oil, solution of soluble natural compound, natural plant and herb extract, ester, sensory receptor alterant, oxidizing agent, biological agent, surfactant, surface active polymer, and any mixtures of these, but not including ascorbic acid or its derivatives. Claims 29 and 30 depend from claim 28.

Petrus describes a foam tampon having one or more cords shaped into a loop placed through the body of the tampon, to assist in insertion and removal from the body cavity. Petrus further describes a tampon impregnated with spermicides, anti-infectives, anti-fungals, anti-virals, hormones, amino acids and/or anti-oxidants (col. 3, lines 5 – 11; col. 1, lines 7 – 10; and col. 3, lines 2 - 5). Petrus also describes a combination of the medications described above and lubricants/moisturizers to be placed “on only the outer region (22)” of the tampon. Petrus describes examples of lubricants for vaginal dryness such as glycerin, sorbic acid, and mineral oil (col. 6, lines 37 – 43).

As admitted by the Action on page 6, Petrus is silent on the amount of counteractant material present in the absorbent. Therefore, Applicants respectfully submit that Petrus cannot anticipate each and every feature of

independent claims 1, 6 and 27, each of which recite a concentration range for the malodor counteract claimed. Therefore, the §102(b) rejection cannot be sustained. Reconsideration and withdrawal of the §102(b) rejection are respectfully requested.

Regarding independent claim 11, Applicants respectfully submit that Petrus fails to disclose or suggest a fibrous tampon, let alone a fibrous tampon with glycerin and at least one additional malodor counteractant selected from the claimed group.

The Action relies on the disclosure at col. 6, lines 37-52 in Petrus stating "...Petrus discloses a tampon having glycerin and pectin as a malodor counteractant material..." Applicants respectfully submit that while Petrus does disclose a tampon having glycerin as a lubricant and pectin as a deodorant for aromatic purposes, Petrus clearly falls short of disclosing each and every feature recited in claim 11.

To properly evaluate the Petrus disclosure relied upon by the Action, one must read the preceding disclosure in column 5, lines 20-42. Here, Petrus specifically describes the tampon as including a spherical member having a polymeric sponge-like material. Petrus goes on to state that the material is preferably a soft, lightweight, physiologically inert polymeric foam of polyurethane, polyether, polyester, or the like, and that the tampon is preferably

cut from a block of foam. The remainder of the disclosure is only concerned with a foam tampon. Notably absent from this disclosure is a fibrous tampon, such as that recited in claim 11.

In addition, Petrus only discloses the use of Pectin in the foam tampon added for aromatic purposes. Applicants respectfully submit that Petrus fails to disclose a fibrous tampon having thereon a malodor counteractant material comprising glycerin, and at least one additional malodor counteractant material selected from aldehyde, natural oil, solution of soluble natural compound, natural plant and herb extract, citric acid, base, EDTA, ester, sensory receptor alterant, oxidizing agent, biological agent, surfactant, surface active polymer, zeolite, and any mixtures thereof, as recited in claim 11. Applicants assert that pectin does not fall within any of the claimed additional malodor counteractant materials recited in claim 11.

Accordingly, Petrus fails to anticipate each and every feature recited in claim 11. As such, reconsideration and withdrawal of the §102(b) rejection are respectfully requested.

As for independent claim 20, Applicants respectfully submit that Petrus fails to disclose or suggest (1) a fibrous tampon with a fibrous material for absorbing body fluids and (2) a liquid glycerin that does not support microbial growth disposed within the fibrous material of the tampon.

As noted above, Petrus specifically describes their tampon as including a spherical member having a polymeric sponge-like material. Petrus states that the material is preferably a soft, lightweight, physiologically inert polymeric foam of polyurethane, polyether, polyester, or the like, and that the tampon is preferably cut from a block of foam (col. 5, lines 20-42). Moreover, the Action relies on the Petrus disclosure at col. 4, lines 40 –50, which provides, in relevant part: “As defined herein, ‘tampon’ refers to any porous member which can be inserted into a physiological cavity. The tampon includes any porous substance which is capable of being impregnated and/or coated.”

Nowhere in the cited disclosure relied upon by the Action, or anywhere else in Petrus, is a fibrous tampon disclosed or suggested, let alone one with glycerin that does not support microbial growth disposed within the fibrous material of the tampon, as recited in claim 20. Applicants respectfully submit that the disclosure of a tampon made from polymeric sponge-like material or any porous substance falls short of disclosing or remotely suggesting the fibrous tampon of the claimed invention.

Therefore, Applicants respectfully submit that Petrus cannot anticipate each and every feature recited in claim 20. Accordingly, reconsideration and withdrawal of the §102(b) rejection are respectfully requested.

As for independent claim 26, Applicants respectfully submit that Petrus fails to disclose or suggest a method of deodorizing a vaginal area with the step of applying to the vaginal area a multi-layered fibrous absorbent article having the claimed malodor counteractant material (emphasis added). Again, Petrus fails to disclose any fibrous tampon, as noted above with respect to claims 11 and 20. Moreover, Petrus clearly fails to disclose or suggest any multi-layered tampon, let alone a multi-layered tampon as recited in the method of claim 26.

As such, Applicants respectfully submit that Petrus cannot anticipate each and every feature recited in claim 26. Therefore, reconsideration and withdrawal of the §102(b) rejection are respectfully requested.

As for independent claim 28, Applicants respectfully submit that Petrus fails to disclose or suggest a fibrous absorbent article, let alone one with one or more malodor counteractant materials, in liquid form, selected from aldehyde, natural oil, solution of soluble natural compound, natural plant and herb extract, ester, sensory receptor alterant, oxidizing agent, biological agent, surfactant, surface active polymer, and any mixtures of these, but not including ascorbic acid or its derivatives.

As noted above with respect to independent claims 11 and 20, Petrus clearly fails to disclose or suggest a fibrous absorbent article. Petrus only describes a tampon made from polymeric sponge-like material or any porous



substance, both of which are not fibrous like the claimed invention. Moreover, Petrus only discloses the use of pectin as a deodorant and discloses no other malodor counteractant materials, let alone one or more selected from the group recited in claim 28.

Therefore, Applicants respectfully submit that Petrus fails to anticipate each and every feature of claim 28. As such, reconsideration and withdrawal of the §102(b) rejection are respectfully requested.

**Claims 1, 3, 5 through 7, 10 through 15, 20 through 24, and 26 through 30 are rejected under 35 U.S.C. §103(a) as being unpatentable over Petrus.**

Independent claim 1, as amended, recites "...wherein said one or more malodor counteractant materials is present between about 0.01 grams to about 0.15 grams..." (emphasis added)

Petrus discloses the addition of deodorant as follows: "A deodorant, such as pectin, may also be added to the tampon for aromatic purposes" (col. 6, lines 49 – 51). As acknowledged in the Action, Petrus does not disclose or suggest a specific or preferred range of deodorant, and thus does not disclose all elements of the claim. The present application provides data that shows that the odor-absorbing efficacy of the malodor counteractant glycerin, for example, is not a

simple linear relationship (see Figure 2). On page 18, line 3 to page 19, line 2, the method and data for *in vitro* testing of malodor absorption was provided, showing that “as little as 0.01 grams of glycerin absorbed 70% of the synthetic vaginal malodor,” while “about 0.05 grams of glycerin data eliminated about 92% of synthetic vaginal malodor.” As shown in Figure 2, there are diminishing returns for additional odor-absorbing activity as the amounts of glycerin increase and the odor-absorbing efficacy approaches 100%. The recited amounts are therefore more than simply determining an optimum value from within a previously-disclosed range, as Petrus does not disclose any data showing the correlation of any particular amounts of pectin (or of any deodorant material) with its efficacy in absorbing odors, and thus is outside the ambit of situations such as occurred in *in re Boesch*, as cited in the Action. Applicants respectfully submit that the data demonstrate that the particular claimed amounts of malodor counteractant materials recited in amended claim 1 are not arbitrary, and, without benefit of hindsight reasoning, would not have been obvious to a person of skill in the art.

Further, as noted above, Petrus discloses a tampon made of polymeric foam (col. 4, lines 27 – 28; col. 5, lines 29 – 36), and does not specifically disclose or suggest a fibrous tampon.

Accordingly, Applicants request reconsideration and withdrawal of the rejection to claim 1 brought under §103(a).

Dependent claims 3, 5 and 24 would also not have been obvious over Petrus for the reasons provided for the independent claim above. Therefore, Applicants request reconsideration and withdrawal of the rejection to claims 3, 5 and 24 brought under §103(a).

Claim 6, as amended, recites "...the tampon comprising glycerin present between about 0.01 grams to about 0.15 grams..."

Petrus, on the other hand, provides in relevant part only that: "A deodorant, such as pectin, may also be added to the tampon for aromatic purposes" (col. 6, lines 49 – 51).

Claim 6 therefore requires, similar to the reasons provided for claim 1 above, specific amounts of glycerin, which are not disclosed or suggested by any disclosure in Petrus. As noted for claim 1 above, the recited amounts of glycerin in claim 6 are not arbitrary, and the data provided in the application (page 18, line 3, to page 19, line 2) demonstrate that there is a definite, non-linear relationship between amounts of glycerin and efficacy of malodor absorption (Figure 2, and table in Figure 3) that would not be obvious, without benefit of hindsight reasoning, to the person of skill in the art. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection to claim 6 brought under §103(a).

Dependent claims 7 and 10 would also not have been obvious over Petrus for the reasons provided for the independent claims above. Therefore, Applicants request reconsideration and withdrawal of the rejections to claims 7 and 10 brought under §103(a).

Dependent claims 12 , 13 and 15 all depend from independent claim 11. Independent claim 11, as amended, recites a fibrous tampon having thereon a “malodor counteractant material comprising: glycerin; and at least one additional malodor counteractant material selected from aldehyde, natural oil, solution of soluble natural compound, natural plant and herb extract, citric acid, base, EDTA, ester, sensory receptor alterant, oxidizing agent, biological agent, surfactant, surface active polymer, zeolite, and any mixtures thereof.” (emphasis added) The claims that depend from claim 11 add the following features: “wherein said glycerin is in liquid form” (claim 12); “wherein said glycerin is all naturally sourced” (claim 13); “wherein said at least one additional malodor counteractant material is in liquid form”; and “wherein said at least one additional malodor counteractant material is all naturally sourced” (claim 15).

Petrus, as noted above, provides in relevant part only: “A deodorant, such as pectin, may also be added to the tampon for aromatic purposes” (col. 6, lines 49 – 51).

Dependent claims 12 through 15 are not obvious over Petrus because Petrus never discloses or suggests a fibrous tampon having a malodor counteractant material made of glycerin plus at least one of another material. In addition, Applicants submit that pectin (which was disclosed by Petrus) does not fall within any of the additional malodor counteractant materials recited in independent claim 11. As provided in the application, the malodor counteractants recited in claim 11 have various mechanisms of absorbing malodors, such as "EDTA," which functions as a chelating agent to react with metal components (to reduce malodors), and "oxidizing agents," which function by oxidizing the chemical components that cause malodor. The combination of such agents (possessing multiple mechanisms of activity) with glycerin as a malodor counteractant would not have been obvious to a person of skill in the art in light of Petrus's disclosure, without benefit of hindsight reasoning. Thus, for these same reasons, dependent claims 12, 13 and 15 are not obvious over Petrus. The Action separately addresses dependent claim 14, asserting that Petrus discloses that "the fragrance was in liquid form" at col. 7, lines 60 – 67. However, at col. 7, Petrus references a sonic bath (Figure 5) in which a tampon (10) can be selectively impregnated with various fluids in solution (32). Petrus describes this technique to impregnate the tampon with a "spermicide, anti-infective, anti-viral, anti-fungal, etc.," each of which would be an active agent within the catamenial/tampon product. Petrus does not disclose or suggest impregnation with a liquid fragrance at this citation, nor suggest why a person of ordinary skill in the art would presume that a fragrance would necessarily be in

liquid form because of this description in the reference. The example of a deodorant that is disclosed by Petrus, pectin, is generally a solid at room temperatures. Therefore, for the above reasons, dependent claims 12 through 15 would not have been obvious over Petrus. Applicants therefore request reconsideration and withdrawal of the rejections to claims 12 through 15 brought under §103(a).

Claims 21 through 23 depend from independent claim 20. Claim 20, as amended, recites "...a fibrous material suitable for absorbing said body fluids; and a liquid glycerin that does not support microbial growth, disposed within said fibrous material of said tampon to absorb odors associated with said body fluids..." (emphasis added).

Petrus discloses a tampon made of polymeric foam (col. 4, lines 27 – 28; col. 5, lines 29 – 36), and does not disclose or suggest a tampon comprising a fibrous material. For this reason alone, Petrus does not disclose or suggest all features of claim 20, and thereby does not do so for its dependent claims 21 through 23.

However, in addition to the above reason, Petrus discloses placement of a lubricant/moisturizer "on only an outer region (22)" of the tampon (col. 8, lines 57 – 60), where the outer region is "10% to 20% of said diameter [of the tampon directly adjacent to the outer surface" (col. 10, lines 6 – 7), to assist with insertion

and removal of the tampon. Petrus provides examples of lubricants such as glycerin, sorbic acid, and mineral oil (col. 6, lines 37 – 43). Petrus further provides a means to add lubricant to just the outer region: “sonic placement of lubricant within only the outer region ensures that any tears, holes, or imperfections in the sponge-like porous material will be fully sealed near the member surface” (col. 6, line 37; col. 7, lines 2 – 5). As Petrus only discloses the use of glycerin as a lubricant, the Action stated that the use of glycerin to absorb odors was taught in a secondary reference, U.S. Patent No. 4,880,417 to Yabrov (an anal pad to absorb odors from flatus).

Claim 20 recites liquid glycerin that does not support microbial growth that is “disposed within the fibrous material” of the fibrous tampon. Petrus, by contrast, emphasizes the advantages of placing a lubricant on “only the outer region of the tampon,” and thus is teaching away from disposing glycerin within the fibrous material that makes up the fibrous tampon. In addition, claim 20 recites that the glycerin is disposed within the fibrous material “to absorb odors associated with said body fluids.” Examples of the disposition of glycerin provided in the application further clarifies that the malodor counteractants (preferably glycerin) are “dispensed, as shown in Figure 1, in a continuous line on the inner surface of inner layer 14” (page 24, lines 16 – 19). This placement is distinguished from the placement of glycerin “on an outer region” as emphasized by Petrus. Moreover, neither Petrus nor Yabrov provide a motivation for the skilled artisan to combine Yabrov’s teaching of glycerin to

absorb odors from flatus with Petrus's tampon designed for easy insertion and removal having glycerin as a lubricant on its outer layer.

For all of these reasons, it would not have been obvious for the person of skill in the art to modify Petrus to produce a tampon comprising "a fibrous material" and having "a liquid glycerin disposed within said fibrous material" to absorb malodors, as recited in claim 20. Therefore, for these same reasons, dependent claims 21, 22, and 23 would not have been obvious over the cited art, taken alone or in combination.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejections to claims 21 through 23 brought under §103(a).

The §103(a) rejection to dependent claim 24 was addressed in the remarks directed to claim 1, above.

Claim 27, as amended, recites a "liquid glycerin that does not support microbial growth disposed in said fibrous material, wherein said liquid glycerin is present in an amount between about 0.01 grams to about 0.15 grams...wherein said liquid glycerin counteracts malodor in said vaginal area."



Petrus, as noted earlier, provides in relevant part that: "A deodorant, such as pectin, may also be added to the tampon for aromatic purposes" (col. 6, lines 49 – 51).

Claim 27 therefore requires, for reasons similar to those provided for claims 1 and 6 above, a specific range for the amounts of glycerin that is not disclosed or suggested by the disclosure in Petrus. Applicants submit that the recited amounts of glycerin in claim 27 are not arbitrary, and data in the application (at page 18, line 3, to page 19, line 2) demonstrate that there is a definite, non-linear relationship between amounts of glycerin and efficacy of malodor absorption (Figure 2, and table in Figure 3) that would not have been obvious to the person of skill in the art without benefit of hindsight reasoning.

Accordingly, for these reasons, Applicants respectfully request reconsideration and withdrawal of the rejection to claim 27 brought under §103(a).

Claim 28 recites a fibrous absorbent article for absorbing body fluids that has "one or more malodor counteractant materials selected from the group consisting of aldehyde, natural oil, solution of soluble natural compound, natural plant and herb extract, ester, sensory receptor alterant, oxidizing agent, biological agent, surfactant, surface active polymer, and any mixtures..." and "wherein said one or more malodor counteractant materials is in a liquid form."

(emphasis added).

By contrast, Petrus discloses only: "A deodorant, such as pectin, may also be added to the tampon for aromatic purposes" (col. 6, lines 49 – 51).

Claim 28 is not obvious over Petrus because Petrus never discloses or suggests a fibrous absorbent article having a malodor counteractant material that is selected from the group listed above. The sole deodorant specifically identified in Petrus, pectin, does not fall within any of the malodor counteractant materials recited in claim 28. In addition, pectin exists in solid form (at relevant temperatures), rather than in liquid form, as recited in claim 28. Further, as provided in the application, the malodor counteractants that are recited in claim 28 have various mechanisms of absorbing malodors, such as an "oxidizing agent," which functions by oxidizing the chemical components that cause malodor (page 14, lines 6 – 12), and an "ester," disclosed as having a "quasi-universal ability of abating malodors" because of double bonds present in the chemical structure (page 13, lines 1 – 7). The use of agents having such varied mechanisms of abating malodors would not have been obvious to a person of skill in the art in light of Petrus's cursory disclosure, without benefit of hindsight reasoning.

Also, as noted earlier, Petrus discloses a tampon made of polymeric foam (col. 4, lines 27 – 28; col. 5, lines 29 – 36), and does not disclose or suggest a

“fibrous” absorbent article, as recited in claim 28.

Accordingly, Applicants submit that claim 28 is not obvious over Petrus, taken alone or in combination with Yabrov. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection to claim 28 brought under §103(a).

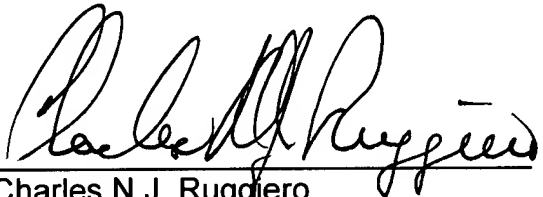
Dependent claims 29 and 30 would also not have been obvious over Petrus, for the reasons provided for independent claim 28 above. Furthermore, dependent claim 29 recites, “...wherein said one or more malodor counteractant materials is present between about 0.01 grams to about 50% of the total weight of the fibrous absorbent article” and dependent claim 30 recites, “...wherein said one or more malodor counteractant materials is present between about 0.01 grams to about 20% of the total weight of the fibrous absorbent article” (emphasis added). For the same reasons as provided earlier, the particular amounts of the malodor counteractant in the fibrous absorbent article is not arbitrary. As shown in the data provided for glycerin (see Fig. 2 and table in Fig. 3), even the relationship of amount of a malodor counteractant and its odor-absorbing efficacy cannot be assumed to be linear or established by routine experimentation. For these reasons, dependent claims 29 and 30 would not have been obvious over the brief disclosure of a deodorant in Petrus.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejections to claims 29 and 30 brought under §103(a).

For the reasons above, Applicants submit that claims 1, 3, 5 through 7, 10 through 15, 20 through 24, and 26 through 30, as amended, are patentably distinguishable over the cited art, taken alone or in combination. As such, reconsideration and withdrawal of the rejections above, and passage of this application to allowance, are respectfully requested.

Respectfully submitted,

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